



North Dakota Office of State Tax Commissioner

2004 Corporation Income Tax

Rick Clayburgh, Tax Commissioner

Form 40 **Form 40-UT** **Form 40-ES**

Need help?
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www.ndtaxdepartment.com

- **Download tax forms**
- **Find answers to tax questions through our Frequently Asked Questions.**
- **E-mail your tax questions:**
corptax@state.nd.us

Dear Taxpayer,

As you prepare your North Dakota corporation income tax return, please consider the following:

Corporations engaged in business in North Dakota or having sources of income from North Dakota must file a North Dakota Corporation Income Tax Return, Form 40.

A corporation which files a Federal Form 1120S as a small business corporation must file a North Dakota Small Business Corporation Income Tax Return, Form 60.

Financial institutions (*See North Dakota Century Code ch. 57-35.3*) located or doing business within North Dakota must file a North Dakota Financial Institution Tax Return, Form 35.

If you have questions, need tax forms, or would like other North Dakota tax information, give us a call or visit our Web site at www.ndtaxdepartment.com. I also encourage you to let us know what you think we are doing well and what we can do to improve service to you. Please e-mail, phone, or write us using the contact information found on the following page.

Sincerely,

Rick Clayburgh,
Tax Commissioner



Please remove label and attach it to your return



Taxpayer Bill of Rights

You may get a copy of the North Dakota Taxpayer Bill of Rights by contacting the Office of State Tax Commissioner or visiting our Web site at

www.ndtaxdepartment.com

Need forms or assistance?

If you need a North Dakota form or schedule, or if you have a question about preparing your North Dakota return . . .

Call

Questions or Forms: (701) 328-2046

If speech or hearing impaired,
call us through Relay North Dakota: 1-800-366-6888

Visit our Web site

On our Web site, you will find the following resources:

- Tax forms
- Electronic payment information
- Income tax statutes and regulations
- Calendar of due dates, public meetings, and workshops
- Press releases
- On-line message service

Our Web site address is:

www.ndtaxdepartment.com

Come in to see us

Stop in to see us in person at our office in Bismarck.
You will find us in the—

Corporate Income Tax Section
State Capitol, 16th Floor
Monday through Friday
8:00 a.m. to 5:00 p.m.

Write

Office of State Tax Commissioner
600 E. Boulevard Ave., Dept. 127
Bismarck, ND 58505-0599

E-mail us

Request forms, ask us a question, or send a message to us
via e-mail at:

corptax@state.nd.us

Or go to our Web site at:

www.ndtaxdepartment.com (click on **contact us**)

Fax

You may fax your request or question to (701) 328-1942



Items of Interest

Repeal of federal tax deduction

The federal income tax liability will not be allowed as a deduction in calculating North Dakota taxable income effective for taxable years beginning after December 31, 2003.

The recapture of federal alternative minimum tax disallowed in the computation of the federal tax deduction has also been repealed.

As a result of the repeal of the federal tax deduction and the recapture provision, North Dakota Schedules FTD and AMT-R have been eliminated from the 2004 forms and instructions booklet.

Surtax on water's edge method election

Taxpayers electing the water's edge method to apportion income

to North Dakota must pay an additional surtax of 3.5% of North Dakota taxable income for years beginning after December 31, 2003.

Preparer authorization

An authorization box has been added in the signature area. This will allow us to contact the preparer to answer any questions that may arise during the processing of your tax return.

Prescribed forms and schedules

To correctly process the corporate income tax return it is necessary to complete Page 1 and related schedules of Form 40. Schedules created by taxpayers, tax preparers, and software vendors may only be accepted as supporting documentation for amounts provided on the prescribed tax return and schedules.

Incomplete tax returns may be returned

Should separate schedules be created by taxpayers and tax practitioners in place of the supporting schedules prescribed on Form 40, the tax return will be regarded as incomplete and returned.

North Dakota Schedule CR

Schedule CR is to be completed every time a consolidated tax return is filed in North Dakota. On Form 40, line 1 the filing method box b1, b2, or c1 will have been checked if a consolidated tax return is being filed.

New tax rates and brackets

Effective for taxable years beginning after December 31, 2003, the new tax rates and graduated income brackets are:

| If North Dakota taxable income is: | | The tax is: | |
|------------------------------------|--------------|--------------------------------------|--|
| Over | But not over | | |
| \$ 0 | \$ 3,000 | 2.60% of North Dakota taxable income | |
| 3,000 | 8,000 | 4.10% of the amount over \$3,000 | |
| 8,000 | 20,000 | 5.60% of the amount over \$8,000 | |
| 20,000 | 30,000 | 6.40% of the amount over \$20,000 | |
| 30,000 | | 7.00% of the amount over \$30,000 | |

If a corporation elects to use the water's edge method to apportion its income, the corporation will be subject to an additional 3.5% surtax on its North Dakota taxable income.

Checklist to Avoid the Most Common Problems

- Read and understand all the instructions before completing the tax return.
- Check taxable year box at the top of the form, or if fiscal year, complete dates of fiscal year.
- Use the pre-addressed label or enter the current mailing address.
- Enter a phone number contact.
- Enter Federal Employer Identification Number, if not using pre-addressed label.
- Answer farming or ranching question “Yes” only if business is registered as farm/ranch corporation with North Dakota Secretary of State Office.
- Enter business code from federal tax return.
- Carefully read instructions for filing method box choices and check only the box describing the filing method used for this tax return.
- Answer each question on page 2 of Form 40.
- Complete all supporting schedules on prescribed or approved forms.
- Attach computer generated statements only as supporting documentation to the amounts entered on the officially prescribed or approved forms.
- Attach only necessary forms for the filing method used. For example, if using the single entity method, do not attach North Dakota Schedule WW or Schedule WE to the return.
- Complete Schedule CR so only companies that apportion income to North Dakota are listed. However, on Part II, the denominator of the apportionment factor computation includes the total property, payroll, and/or sales of all unitary companies in the combined group.
- Complete Schedule CR on the prescribed or approved schedule - do not file computer generated statements in place of Schedule CR.
- Attach complete copy of the federal income tax return (North Dakota does not require copies of depreciation schedules).
- Have tax return signed by a person authorized by the corporation.

General instructions

Who must file

Every corporation engaged in business in North Dakota or having income from North Dakota sources must file a North Dakota Corporation Income Tax Return, Form 40.

For example, a North Dakota Form 40 must be filed by:

- Corporations, including business trusts, associations, and joint-stock companies;
- Cooperative corporations distributing their net income through patronage dividends;
- Insurance companies conducting business activities not subject to the North Dakota gross premium tax;
- Tax-exempt organizations having unrelated business taxable income; and
- Organizations that anticipate receiving a tax exempt status notification from the Internal Revenue Service, but have not actually received such notification by the end of the taxable year.

A corporation which files a Federal Form 1120S as a small business corporation must file a North Dakota Small Business Corporation Income Tax Return, Form 60.

Financial institutions located or doing business within North Dakota must file a North Dakota Financial Institution Tax Return, Form 35. (*See N.D.C.C. ch. 57-35.3*)

Due date

A calendar year corporation filing Form 40 must file on or before April 15 following the close of the calendar year.

A corporation reporting on a fiscal year basis must file on or before the 15th day of the fourth month following the close of the fiscal year. Use the 2004 Form 40 for fiscal years that begin in 2004 and end in 2005.

A cooperative must file on or before the 15th day of the ninth month following the close of the calendar or fiscal year. Answer "Yes" to Question #5 on page 2 of Form 40.

Tax-exempt organizations required to file an income tax return to report unrelated business taxable income must file a corporation income tax return on or before the 15th day of the fifth month after the tax year ends.

Short period return

A corporation required to file a federal short period return must file a North Dakota short period return for the same taxable period. The North Dakota return is due on or before the 15th day of the fourth month following the close of the short period. If the due date of the short period federal return falls on a date after the 15th day of the fourth month following the close of the short period, contact the Office of State Tax Commissioner for information regarding the due date for the North Dakota return.

A corporation terminating as a Subchapter S Corporation during the year, or a corporation changing its annual accounting period, must annualize its North Dakota taxable income and prorate its state tax liability in the same manner as the federal tax liability is prorated.

Extension of time for filing

An extension of time to file a federal return is automatically accepted by North Dakota as an extension of time to file the state return for the same number of months as the federal extension.

A copy of the federal extension, Form 7004, must be attached to the state return. The return must be processed as a delinquent return if a copy of the federal extension is not attached.

A state extension to file may be obtained, even if a federal extension has not been requested, provided a written request is made to the Office of State Tax Commissioner prior to the due date of the North Dakota return.

An extension of time to file a North Dakota tax return does not extend the time for payment of the tax. A corporation must prepay its entire state tax liability by the regular due date of the tax return for the taxable year, or interest at the rate of 12% per annum will apply to any payment made after the regular due date of the state tax return. The payment must be accompanied by a copy of the federal extension Form 7004, and North Dakota Form 40-EXT, identifying the name, address, and Federal Identification Number of the taxpayer corporation. Alternatively, a letter containing the above information along with a copy of the approved state extension of time to file may be submitted with the prepayment of tax due.

Payment of tax

If tax due (*including interest and penalty*) is less than \$5.00, payment need not be made. If tax is due, the total payment due must be paid at the time of, or before, the return is filed. Payment may be made with check or money order, made payable to the North Dakota State Tax Commissioner.

Payment may also be made by using the Automated Clearing House (ACH) credit procedure of electronic funds transfer. For information, visit our Web site at www.ndtaxdepartment.com. Click on Corporate Income and then Electronic Filing. Check the box on the line under Line 20c of Form 40, page 1, and fill in the date of the payment.

Preparer authorization

If the corporation wants to allow the North Dakota Office of State Tax Commissioner to discuss its 2004 tax return with the preparer who signed it, check the box in the signature area of the return. This authorization applies only to the individual whose signature appears in the "Signature of Preparer" section of the corporation's return. It does not apply to the firm, if any, shown in that section.

If the box is checked, the corporation is authorizing the North Dakota Office of State Tax Commissioner to contact the preparer to answer any questions that may arise during the processing of its return.

The corporation is also authorizing the preparer to:

- Give the North Dakota Office of State Tax Commissioner any information that is missing from the return,
- Call the North Dakota Office of State Tax Commissioner about the processing of the return or the status of any related refund or payment(s), and
- Respond to certain North Dakota Office of State Tax Commissioner notices that the corporation has shared with the preparer about math errors and return preparation. The notices will not be sent to the preparer.

The corporation is not authorizing the preparer to receive any refund check, bind the corporation to anything (*including any additional tax liability*), or otherwise represent the corporation before the North Dakota Office of State Tax Commissioner. If the corporation wants to expand the preparer's authorization, North Dakota Form 500, Authorization to Disclose Tax Information and Designation of Representative, will need to be signed and filed with our office. North Dakota Form 500 can be found on our Web site at www.ndtaxdepartment.com. Click on Corporate Income and then Forms.

The authorization will automatically end no later than the due date (*excluding extensions*) for filing the corporation's 2005 tax return.

Attachments

A complete copy of the federal income tax return as filed with the Internal Revenue Service must be attached to Form 40.

Overpayments

Overpayments of income tax may be applied to the 2005 estimated tax (*minimum \$5.00*), or issued as a refund (*minimum \$5.00*).

A corporation may elect to have the overpayment credited to a 2005 estimated tax installment by circling the appropriate quarter on Form 40, page 1, line 21a.

Interest and penalty

The Office of State Tax Commissioner will notify the taxpayer of any interest and penalty owed on tax due. If desired, interest and penalty may be computed by the taxpayer on tax due and entered on the return.

Interest:

If the full amount of the tax is not paid by the due date, the current provision for interest is:

- Interest will be computed at the rate of 1% per month (*or a fraction of a month*) of the tax due, except the month in which the tax became due.

Penalty:

- If the return is filed by the due date, but the full amount of tax is not paid, a penalty equal to 5% of the unpaid tax due or \$5.00, whichever is greater becomes payable.

- If the return is not filed by the due date (*or extended due date*), a penalty of 5% of the net tax liability or \$5.00, whichever is greater, applies for the month in which the return is due, with an additional 5% for each additional month (*or a fraction of a month*) during which the delinquency continues, not to exceed 25% of the net tax liability.

If there is an overpayment on Form 40, page 1, interest at the rate of 1% per month accrues on the overpayment beginning forty-five days after the due date of the return (*without extension*) or after the date the return is filed, whichever date is later.

Incomplete return

All applicable lines on Form 40 must be completed. A return with incomplete lines or schedules, or with notations such as "see attached statement" or "available upon audit," is not properly filed and will be returned to the taxpayer.

Ratios and decimals

On all schedules where a ratio or decimal is called for, use 6 digits after the decimal point.

To file or obtain additional forms and instructions

Completed returns and written requests for information and forms should be mailed to the Office of State Tax Commissioner, 600 E. Boulevard Ave., Dept. 127, Bismarck, ND 58505-0599.

If you have corporate income tax questions or are seeking tax forms, please e-mail us at corptax@state.nd.us, visit our Web site at www.ndtaxdepartment.com, or call our Corporate Tax Section at (701) 328-2046.

For the speech or hearing impaired, call Relay North Dakota at 1-800-366-6888.

Information at the source

Any corporation doing business in North Dakota that is required to file a Federal Form W-2 or 1099 must also file one with this state. For more information on the requirements and alternatives for satisfying those requirements, contact our office.

Quick refund

A quick refund of overpaid estimated income tax may be requested by a corporation if the overpayment exceeds five hundred dollars (\$500) and the claim for quick refund is filed after the close of the taxable year but before the 15th day of the fourth month thereafter.

The form for the Quick Refund Of Estimated Income Tax For Corporations (*Form 40-QR*) must be obtained by contacting our office.

Estimated tax payments

If a corporation's estimated state income tax liability exceeds five thousand dollars (\$5,000) **and** its previous year's state income tax liability exceeded five thousand dollars (\$5,000), the corporation is required to make an estimated tax payment of at least one-fourth of the amount due on each of four prescribed dates.

Information regarding estimated tax payments is located at the back of this booklet.

Amended returns/federal audit changes

An Amended North Dakota Corporation Income Tax Return, Form 40X, must be filed if:

- An amended federal income tax return is filed;
- North Dakota income is changed as a result of a federal audit;
- An error is discovered on a previously filed return;
- The corporation received a refund of federal income tax which was deducted on a previously filed Form 40.

Information about amended returns can be found in N.D.C.C. §§ 57-38-38 and 57-38-40.

Form 40X and instructions can be obtained by visiting our Web site at www.ndtaxdepartment.com.

Federalization

The North Dakota income tax law is perpetually "federalized" for the Federal Taxable Income starting point of the North Dakota return.

Method of corporation taxation

The North Dakota corporation income tax applies only to that portion of a corporation's taxable income which is derived from or attributable to sources within this state.

A nonapportioning corporation, that is, a corporation whose business activity is conducted solely within North Dakota, computes North Dakota taxable income by adjusting its federal taxable income by North Dakota statutory adjustments.

An apportioning corporation, that is, a corporation whose business activity is conducted both within and without North Dakota, computes North Dakota taxable income by adjusting its federal taxable income by North Dakota statutory adjustments and apportioning this adjusted taxable income using Schedule FACT, FACT-1, or CR (*Part II*) of Form 40.

A corporation engaged in a unitary business with one or more corporations (*irrespective of the country or countries in which the corporations conduct business*) must file using the combined report method.

A unitary business is a group of corporations which carries on activities, the component parts of which transfer value among themselves through the unities of ownership, operation and use.

- "Unity of ownership" means the group is under the common control of a single corporation, which is also a member of the group. Control exists when the single corporation owns, directly or indirectly, more than fifty percent of the voting stock of another corporation;
- "Unity of operation" means the group receives benefits from functional integration or economies of scale;
- "Unity of use" means the group of corporations contributes to or receives benefits from centralized management and policy formation.

Whether a group of corporations is engaged in a unitary business depends on the facts and circumstances of each case. If unity of ownership exists, any of the following facts or circumstances creates a presumption that the unities of operation and use exist; therefore, the corporations are engaged in a unitary business if:

- All activities of the group are in the same general line or type of business;
- The activities of the group constitute different steps in a vertically structured enterprise; or
- The group is characterized by centralized management.

Water's edge election

A corporation required to file its North Dakota return using the worldwide unitary combined report method may elect to use the water's edge method. The water's edge election must be made on the return as originally filed and is binding for five consecutive years. ***If the election is made, a corporation will be subject to a 3.5% surtax on its North Dakota taxable income.***

A domestic disclosure spreadsheet must be obtained from and filed with the Office of State Tax Commissioner the first year the property, payroll, or sales in foreign countries exceed ten million dollars and total assets exceed two hundred fifty million dollars, and every third year thereafter provided the property, payroll, or sales in foreign countries exceed ten million dollars and total assets exceed two hundred fifty million dollars.

Specific instructions for Form 40, Page 1

Line 1 Income

Check the box for the reporting method used to complete the return and enter the income reportable under that method.

a. Single Corporate Entity

The single corporate entity method reports income or loss of only one incorporated business that is not part of a unitary business. (See item "Method of corporation taxation" on this page.)

If the single corporate entity method is used for both North Dakota and federal purposes, enter the federal taxable income from:

- Federal Form 1120, line 30; or
- Federal Form 1120-A, line 26.

If the single corporate entity method is used for North Dakota purposes and the corporation is included in a consolidated Federal Form 1120, enter the corporation's federal taxable income before consolidating adjustments/eliminations from:

- A pro forma separate company federal income tax return, line 30; or
- The by-company schedule showing gross income and deductions, which supports the consolidated federal taxable income.

Cooperatives and other business organizations using federal forms other than Federal Form 1120 must enter the federal taxable income from the appropriate form.

Combined Report

For North Dakota corporation income tax purposes, a "combined report" means an income tax return on which the tax liability is computed using the methods described in N.D.C.C. chs. 57-38, 57-38.1 and N.D. Admin. Code chs. 81-03-05.1, 81-03-05.2, 81-03-05.3, and 81-03-09.

- Except for 100% North Dakota corporations required to file a consolidated tax return, it is essential to have a unitary business group of corporations before the combined report method can be used. For a discussion of a unitary business group of corporations, see item "Method of corporation taxation" on this page.
- If filing a North Dakota tax return using the combined report method, box b, b1, b2, c, or c1 should be checked on Form 40, line 1.
- If filing a combined report method North Dakota tax return where only one company apportions income to North Dakota (*i.e., box b or c is checked on Form 40, line 1*) the answer to question #8 on page 2 of Form 40 will be "No".
- If filing a combined report method North Dakota tax return where more than one company apportions income to North Dakota (*i.e., box b1, b2, or c1 is checked on Form 40, line 1*) the answer to question #8 on page 2 of Form 40 will be "Yes".

b. Combined Report Method

Check the "Combined Report Method" box if Form 40 includes only one corporation from a unitary business which apportions its income to North Dakota.

Complete Schedule WW on page 5 and enter the amount from line 13 on Form 40, line 1. Attach the completed Schedule WW to Form 40 when filed.

Answer "no" to question #8 on page 2 of Form 40.

b1. 100% North Dakota Corporations Consolidated Return Using the Combined Report Method

Check the "100% North Dakota Consolidated Return" box *if the corporation is required* to file one consolidated North Dakota return using the combined report method.

Two or more corporations *are required* to file one North Dakota return using the combined report method if the corporations are affiliated as parent and subsidiary, are filing a consolidated federal tax return, and all corporations are operating solely within North Dakota.

If box b1 is checked:

1. Complete Schedule WW on page 5 and enter the amount from line 13 on Form 40, line 1. Attach the completed Schedule WW to Form 40 when filed.
2. Complete North Dakota Schedule CR, Parts I and II on pages 7 and 8.
3. Answer "Yes" to question #8 on page 2 of Form 40.

(continued from previous column)

- Laws and rules governing consolidated returns are found in N.D.C.C. ch. 57-38, and N.D. Admin. Code ch. 81-03-05.1.
- If filing a consolidated North Dakota tax return, box b1, b2, or c1 should be checked on Form 40, line 1.
- Because a North Dakota consolidated return reports the tax liability of more than one corporation, North Dakota Schedule CR, Parts I and II will be completed.
- If filing a consolidated North Dakota tax return (*i.e., box b1, b2, or c1 is checked on Form 40, line 1*) the answer to question #8 on page 2 of Form 40 will be "Yes".

Schedule CR

North Dakota Schedule CR, Parts I and II will be completed *only* for corporations that are required to apportion income to North Dakota (*i.e., if a corporation does not have property, payroll, and/or sales in North Dakota it will not be listed on Schedule CR. However, the denominator of the apportionment factor computation on Part II will be the total property, payroll, and/or sales for all unitary companies in the combined group*).

The Schedule CR in this booklet allows for three separate companies to be reported. If more companies are to be reported, the tax return preparer should copy Parts I and II of Schedule CR and continue to complete the additional schedule copies for companies that apportion their income to North Dakota. (*See page 8 for specific instructions for Schedule CR.*)

b2. Apportioning Corporation Consolidated Return Using the Combined Report Method

Check the "Apportioning Corp Consolidated Return" box if the corporation is filing one consolidated North Dakota return using the combined report method.

Two or more apportioning corporations *may* file one North Dakota consolidated return if the corporations are required to use the combined report method and more than one of the corporations has a filing requirement in North Dakota.

If box b2 is checked:

1. Complete Schedule WW on page 5 and enter the amount from line 13 on Form 40, line 1. Attach the completed Schedule WW to Form 40 when filed.
2. Complete North Dakota Schedule CR, Parts I and II only for companies that apportion income to North Dakota. If a corporation *does not have* property, payroll, and/or sales in North Dakota it will not be listed on Schedule CR.
3. Answer "Yes" to question #8 on page 2 of Form 40.

c. Water's Edge Method

Check the "Water's Edge Method" box if:

- The corporation is a member of a worldwide unitary business group of corporations.
- The corporation elects to file a North Dakota tax return using the water's edge method.
- No other corporations in the combined report have a filing requirement in North Dakota.

If box c is checked:

1. Complete Schedule WE on page 6 and enter the amount from line 11 on Form 40, line 1. Attach the completed Schedule WE to Form 40 when filed.
2. Answer "No" to question #8 on page 2 of Form 40.

c1. Water's Edge Method Consolidated Return Using the Combined Report Method

Check the "Water's Edge Method Consolidated Return" box if:

- The members of a worldwide unitary business group of corporations elect to file a consolidated tax return using the water's edge method, and
- If two or more apportioning corporations in the combined report have a filing requirement in North Dakota.

If box c1 is checked:

1. Complete Schedule WE on page 6 and enter the amount from line 11 on Form 40 line 1. Attach the completed Schedule WE to Form 40 when filed.

Consolidated Return

For North Dakota corporation income tax purposes, a North Dakota "consolidated return" means a single corporation income tax return that reports the tax liability of more than one corporation engaged in business or having sources of income from North Dakota.

- Only taxpayers who compute their North Dakota tax liability using the combined report method may file a consolidated return.

2. Complete North Dakota Schedule CR, Parts I and II only for companies that apportion income to North Dakota.
3. Answer "Yes" to question #8 on page 2 of Form 40.

d. Other

Check the "Other" box if the corporation has received written permission from the Office of State Tax Commissioner to file a North Dakota return using a filing method other than those specified above.

Other filing methods are contained in N.D.C.C. § 57-38.1-18 (*for example, separate accounting or a method using an apportionment factor different from that computed on Schedules FACT, FACT-1 or CR*).

If the box entitled "Other" is checked:

1. Attach a copy of the letter from the Office of State Tax Commissioner granting permission to use, or requiring the use of, this filing method.
2. Attach a worksheet substantiating and explaining the computation of income.
3. Enter the income from the worksheet on Form 40, line 1.

Line 4 North Dakota apportionable income

If completing Schedule CR, enter the amount from Form 40, page 1, line 4 on Schedule CR, Part I, line 4 (*enter the same amount for each company*) and complete Parts I and II of Schedule CR.

If a North Dakota consolidated tax return is being filed to report the tax liability of more than one corporation engaged in business in or having sources of income from North Dakota:

1. **Do not** complete lines 5-20 of Form 40, page 1 until Schedule CR has been completed.
2. Complete Schedule CR, Parts I and II on pages 7 and 8 and enter the totals on Form 40, page 1.
3. Complete Form 40.
4. Attach the completed Schedule CR to Form 40 when filed.

Line 5 Apportionment factor

If a corporation has business income from activity solely within this state, enter 1.000000 on this line.

Corporations not filing a consolidated return, enter the apportionment factor from Schedule FACT, line 14 or Schedule FACT-1, line 6.

Corporations completing Schedule CR must enter the apportionment factor from Schedule CR, Part II, line 14a.

It is required that the supporting schedule FACT, FACT-1, or CR, Part II, whichever is applicable, be completed, and that the 6-digit factor from the supporting schedule be carried to Form 40, page 1, line 5.

If the supporting schedule is not completed, the return will be considered incomplete and returned.

Line 7 Income allocated to North Dakota

Enter nonbusiness income allocated to North Dakota less related expenses. Nonbusiness income is allocated to North Dakota if the income is attributable to North Dakota.

Expenses must be attributed to nonbusiness income in a manner which fairly distributes all of the corporation's expenses to its various types of income.

Corporations completing Schedule CR must enter the total nonbusiness income for all corporations having activity within North Dakota.

Line 9 Exemption for new and expanding business

If the corporation received a new and expanding business exemption from the State Board of Equalization, enter the amount of exempt income computed pursuant to N.D. Admin. Code § 81-03-01.1-06.

Corporations completing Schedule CR, enter the exempt income for each corporation having an exemption.

Attach a schedule showing the computation of exempt income for each corporation.

Line 10 Renaissance zone income exemption

If the corporation is claiming exempt income as a result of the Renaissance Zone Act, enter the total amount of exemption from the summary part of Schedule RZ. Contact the Office of State Tax Commissioner at (701) 328-2046 to obtain Schedule RZ. Attach Schedule RZ to Form 40 when filed.

Line 11 ND income after income exemptions

If the amount on line 11 is a loss, the loss must be carried forward.

Line 12 North Dakota loss carryforward

The North Dakota loss carryforward allowed on the Form 40 is the amount of the accumulated North Dakota loss, less any previously deducted loss carryback or carryforward.

North Dakota net operating losses incurred in taxable years beginning after December 31, 2002, cannot be carried back to a previous taxable year. These net operating losses must be carried forward. Capital losses may still be carried back.

Attach a worksheet showing the accumulated loss, by year, less any previously deducted loss carryback or carryforward.

Corporations completing Schedule CR must enter the loss carryforward from all corporations listed on Schedule CR.

Line 13 North Dakota taxable income

If the return reports a North Dakota loss on Form 40, page 1, line 11, or a North Dakota loss carryforward on Form 40, page 1, line 12, complete lines 13-16.

Line 19 Tax year 2004 estimated income tax payments

Enter the total 2004 estimated income tax payments. Also, enter any 2003 overpayment credited to the 2004 taxable year and any payment voluntarily made to the state with an extension of time for filing.

Line 20a**Interest and penalty for balance due**

The Office of State Tax Commissioner will notify the taxpayer of any interest and penalty owed on tax due. If desired, interest and penalty may be computed by the taxpayer on tax due and entered on the return.

Interest:

If the full amount of the tax is not paid by the due date, the current provision for interest is:

- Interest will be computed at the rate of 1% per month (*or a fraction of a month*) of the tax due, except the month in which the tax became due.

Penalty:

- If the return is filed by the due date, but the full amount of tax is not paid, a penalty equal to 5% of the unpaid tax due or \$5.00, whichever is greater becomes payable.
- If the return is not filed by the due date (*or extended due date*), a penalty of 5% of the net tax liability or \$5.00, whichever is greater, applies for the month in which the return is due, with an additional 5% for each additional month (*or a fraction of a month*) during which the delinquency continues, not to exceed 25% of the net tax liability.

Line 20b**Interest on underpayment of estimated tax**

Instructions for making estimated tax payments are found at the back of this booklet. If estimated payments are not timely made or in the correct amount, interest is charged.

The amount of interest due for underpaid or late payments of estimated tax can be computed on North Dakota Form 40-UT, found at the back of this booklet. Enter the interest from Form 40-UT, line 9 on line, 20b. Attach Form 40-UT to Form 40 when filed.

Line 21a**Amount to be credited to year 2005**

A corporation may elect to have the overpayment credited to a 2005 estimated tax installment by circling the appropriate quarter on Form 40, page 1, line 21a to specify the particular installment to which the amount credited is to be applied.

Specific instructions for Schedule SA

Additions**Line 3****All taxes measured by income deducted to arrive at federal taxable income**

Enter all taxes measured by income, including income taxes, franchise or privilege taxes measured by income (*paid to any taxing authority-including a foreign country*) to the extent such taxes were deducted to arrive at federal taxable income.

Line 4**North Dakota depreciation adjustment**

North Dakota income tax statutes do not allow for the use of ACRS depreciation on assets placed in service between January 1, 1981, and the end of the 1982 tax year. These assets must be depreciated using methods allowed under the Internal Revenue Code provisions in effect as of December 31, 1980. Federal taxable income must be adjusted for the difference in these two methods. Enter the amount of ACRS depreciation deducted on the federal return for these assets for the current taxable year.

Include depreciation on all currently held assets which were placed in service between January 1, 1981, and the end of the 1982 tax year, *not* just such assets which are located within North Dakota.

In computing this adjustment, exclude safe harbor lease assets.

Line 6**Other additions**

The safe harbor lease provisions in Section 168(f)(8) of the Internal Revenue Code of 1954, as amended, are not adopted in North Dakota in those instances where the minimum investment by the lessor is less than one hundred percent (100%). Enter amounts on line 6, as follows:

- Seller/Lessee: sale proceeds, rent expense, amortization expense, lease acquisition cost.
- Buyer/Lessor: interest expense, depreciation expense, amortization expense, acquisition cost, loss on sale of property.

See N.D.C.C. § 57-38-01(5)(a) for more information.

Subtractions**Line 8****Tax refunds received in year 2004**

Enter all income, franchise or privilege tax refunds received in 2004, to the extent such taxes were previously included in North Dakota taxable income.

Federal income tax refunds received cannot be included on line 8. See General instructions: Amended returns/federal audit changes.

Line 10**North Dakota depreciation adjustment**

Enter the amount of depreciation computed for the current taxable year on assets placed in service between January 1, 1981, and the end of the 1982 tax year, using methods allowable as of December 31, 1980. (*See instructions for line 4 for further explanation*).

Include depreciation on all currently held assets which were placed in service between January 1, 1981, and the end of the 1982 tax year, *not* just such assets which are located within North Dakota.

In computing this adjustment, exclude safe harbor lease assets.

Lines 11 and 12**Allocated income and related expenses**

Enter all nonbusiness income on line 11 and enter related expenses on line 12. The method used to attribute expenses to nonbusiness income must fairly distribute all of the corporation's deductions to all of its various types of income.

If an entry is made, all of the following must be attached to Form 40:

- A worksheet showing each type of income or loss item allocated and its amount;
- Documentation showing the state to which the item of income or loss was allocated (*a copy of the other state's tax return is preferred*); and
- A narrative explaining the reasons for allocating each item of income or loss.

Line 15 Other subtractions

If the amount on Form 40, page 1, line 1 includes any gain, either ordinary or capital, from property subjected to eminent domain sale or transfer, such gain is not taxable and must be entered on this line.

Section 168(f)(8) of the Internal Revenue Code of 1954, as amended, is not adopted in North Dakota in those instances where the minimum investment by the lessor is less than one hundred percent (100%). Enter amounts as follows:

- Seller/Lessee: interest income and depreciation expense (*for assets placed in service between January 1, 1981, and the end of the 1982 taxable year, use methods allowed under the Internal Revenue Code as of December 30, 1980; for assets placed in service after the 1982 taxable year, use ACRS depreciation*).
- Buyer/Lessor: rental income.

Regulated investment companies, as defined by the Internal Revenue Code, will be allowed to subtract on this line certain dividends paid to shareholders. The dividends paid must be attributable to income that is taxable under N.D.C.C. ch. 57-38 when the regulated investment company earns the income.

Specific instructions for Schedule TC

Lines 1 and 2 Contributions to nonprofit private colleges and high schools

Tax credits are available for making contributions to qualifying nonprofit private institutions of secondary and higher education located in North Dakota (*including the North Dakota Independent College Fund*). Contributions do not qualify unless they are made directly to, or are specifically designated for the exclusive use of, a qualifying institution. A contribution to an account, fund or entity benefiting both qualifying and nonqualifying institutions does not qualify for the credit. The credits are available if the contribution(s) are made by the due date of this return, including extensions.

The tax credit for contributions made to all eligible schools in *each* category of institution is equal to the lesser of:

- 50% of the contributions but not to exceed 20% of the total ND income tax due for each corporation;
- \$2,500.

Enter on line 1 the tax credit computed for contributions to nonprofit private institutions of higher education (*and the North Dakota Independent College Fund*) and enter on line 2 the tax credit computed for contributions to nonprofit private institutions of secondary education.

For each contribution, attach a copy of a receipt from the nonprofit private institution or a copy of a cancelled check (*front and back*).

Line 3 Venture Capital Corporation credit

A corporation may be entitled to a tax credit for investments made in a North Dakota venture capital corporation. The credit is limited to 25% of the amount invested or \$250,000, whichever is less. If the amount of the credit exceeds the corporation's state tax liability for that taxable year, the credit may be carried forward for up to seven years.

The corporation income tax credit for investments made in a North Dakota venture capital corporation is *not* allowed for investments made after February 28, 1991, in a venture capital corporation organized before January 1, 1989, which invested in a business or an affiliate of a business that owned tax-exempt securities.

A copy of the Venture Capital Corporation Investment Reporting Form must be attached to Form 40 in the initial year the tax credit is claimed.

Line 4 North Dakota Small Business Investment Company credit

If the corporation made a qualifying investment in the North Dakota Small Business Investment Company, enter 25% of the amount invested. If the credit exceeds the amount of the current tax liability, the excess may be carried forward up to seven years.

Attach a copy of the North Dakota SBIC Investment Reporting Form.

Line 5 Geothermal, solar, or wind energy device credit

The credit for devices installed after December 31, 2000, is equal to three percent of the installation cost, each year for five years. The device must be installed in North Dakota on property owned or leased by the taxpayer. This tax credit is limited to devices installed before January 1, 2011.

For devices installed after December 31, 2000, by pass-through entities (*partnerships, Subchapter S Corporations, and Limited Liability Companies*), the tax credit must be passed through to partners, shareholders, or members in proportion to their respective interests in the pass-through entity.

Attach a worksheet substantiating date of purchase, actual cost of acquisition and installation, and computation of the tax credit.

Line 6 Credit for employing the developmentally disabled or chronically mentally ill

A corporation may claim a tax credit for a portion of North Dakota wages paid to a developmentally disabled or chronically mentally ill employee. The tax credit is 5% of up to \$6,000 in wages paid to each such employee during the first twelve months of employment. The credit may not exceed 50% of the total tax liability. Only North Dakota wages actually paid during the taxable year may be considered for the tax credit. If this credit is claimed, attach an affidavit listing the amount of wages paid, the name, and the social security number of each employee.

Line 7 Research and experimental expenditures credit

A corporation which invests in research and experimental expenditures within North Dakota is entitled to a tax credit. The tax credit is determined by subtracting the base period research expenses (*as defined in Section 26 U.S.C. 41(c) of the Internal Revenue Code of 1986, as amended*) which are applicable to North Dakota from the qualified research expenses made in North Dakota, and applying the following rates to the resulting difference:

- 8% on the first \$1,500,000;
- 4% on the excess over \$1,500,000.

If the tax credit exceeds the current income tax liability, any unused tax credit may be carried back for three years and then carried forward for up to fifteen years.

Line 8 New industry credit

A corporation which has been incorporated in North Dakota for the first time after January 1, 1969, and which is not the result of a business reorganization or acquisition, or any out-of-state corporation that has received a certificate of authority to transact business in North Dakota for the first time after January 1, 1969, may be entitled to a tax credit. This tax credit is available only for new enterprises engaged in assembling, fabricating, manufacturing, mixing, or processing any agricultural, mineral, or manufactured products or any combination thereof. However, a corporation which is receiving any property tax or income tax exemption allowed by N.D.C.C. chs. 40-57 or 40-57.1 shall not be allowed this credit.

The tax credit is computed as a percentage of the annual gross amount expended by the corporation for salaries and wages within North Dakota. The following percentages apply:

- 1% for each of the first three taxable years a corporation qualifies for the tax credit;
- .5% for each of the fourth and fifth taxable years a corporation qualifies for the credit.

Attach a worksheet substantiating the date of incorporation, or initial authority to transact business in this state, annual gross amount of salaries and wages within this state, and type of business activity.

Line 9 Credit for payment to a certified nonprofit development corporation

A tax credit is available to a corporation which invests in a certified nonprofit development corporation. The maximum tax credit allowed is 25% of the total investment, not to exceed \$2,000. Any unused credit may be carried forward for up to seven years.

Line 10 Renaissance zone credits

If a corporation is claiming a tax credit as a result of the Renaissance Zone Act, enter the total amount of credits from the summary part of Schedule RZ. Contact the Office of State Tax Commissioner for Schedule RZ. Attach Schedule RZ to Form 40 when filed.

Line 11 Income tax credit for biodiesel fuel production

A tax credit is available to a corporation equal to 10 percent of the direct costs incurred after December 31, 2002, to add equipment to retrofit an existing facility, or to adapt a new facility in North Dakota, to produce or blend diesel fuel containing at least 2 percent biodiesel fuel by volume. The first taxable year in which the credit may be claimed is the taxable year in which the facility begins producing or blending biodiesel fuel. Eligible costs incurred before the taxable year in which production or blending begins are taken into account in calculating the credit. The credit may not exceed the corporation's tax liability in any year, but any unused portion of a taxable year's credit may be carried forward for up to five taxable years. The cumulative credit allowed to a taxpayer for all taxable years is \$250,000.

Specific instructions for Schedule CR

Schedule CR is a worksheet to compute the North Dakota tax liability of more than one company on one North Dakota consolidated return. Before Schedule CR was created, each company that apportioned its income to North Dakota completed and filed a separate tax return. Schedule CR was created to ease the burden and paperwork of having a separate tax return filed for each company of a unitary business group of corporations that apportioned income to North Dakota.

After the creation of Schedule CR, one tax return could be filed for several related companies. The North Dakota tax liability could be computed for each company apportioning its income to North Dakota, added together, and amounts carried to the face of Form 40 - generating one consolidated tax return.

There are two parts to Schedule CR--Part I and Part II.

On Part I, each company begins with North Dakota apportionable income from Form 40, page 1, line 4. Each company will begin with the same apportionable income (*this will be the apportionable income of the entire unitary business group of corporations*), and each company then computes its own tax liability, tax credits, and net income tax due. Losses are carried over on a by-company basis.

On Part II, each company computes its separate North Dakota apportionment factor using the total everywhere property, payroll, and sales of the entire unitary business group of corporations for the denominators, and, each company uses its own separate, within North Dakota property, payroll, and/or sales numerator.

After Schedule CR has been completed and each separate company that apportions its income to North Dakota has computed its North Dakota tax liability and net income tax due, Form 40, page 1 lines 5 - 18 are completed as follows:

1. Copy the apportionment factor from Part II, line 14a to line 5 on the face of Form 40.
2. Add together all the separate companies' amounts for lines 6, 7, 9, 10, 12, 14, 15, 16, 17 and 18 on Part I for all companies included on the Schedule CR and copy the total of each line for all companies to the corresponding line on page 1 of Form 40.
3. Complete Form 40, Schedule TC. The total credits for all companies included on Schedule CR must equal the credits reported on Form 40, Schedule TC.
4. Copy the amount from Schedule CR, Part I, line 18a to Form 40, page 1, line 18.

Attach the completed Schedule CR to Form 40 when filed.

North Dakota estimated income tax for corporations for the 2005 taxable year

General instructions

Who must pay estimated tax

If a corporation's estimated state income tax liability exceeds five thousand dollars (\$5,000) **and** its previous year's state income tax liability exceeded five thousand dollars (\$5,000), the corporation is required to make an estimated tax payment of at least one-fourth of the amount due on each of four prescribed dates.

Where to file

Estimated income tax payments should be mailed to the Office of State Tax Commissioner, 600 E. Boulevard Ave., Dept. 127, Bismarck, ND 58505-0599.

Which form to use

If payment for estimated income tax is to be made by check or money order, the Form 40-ES voucher must be used to ensure that proper credit for the payment is applied to the correct account.

If payment is to be made using the Automated Clearing House (ACH) credit procedures, do not use the Form 40-ES voucher.

Time for filing

The first estimated income tax payment is due no later than April 15 following the close of the calendar year.

Corporations reporting on a fiscal year basis must pay the first estimated tax installment no later than the 15th day of the fourth month following the close of their fiscal year.

No less than one-fourth of the estimated income tax must be paid with the first installment, and with each of the three remaining installments on the 15th day of the sixth and ninth months of the taxable year, and the first month of the following year.

Extension of time to pay estimated tax cannot be granted.

How to pay

Do not commingle estimated income tax payments with any other payment to the North Dakota Office of State Tax Commissioner.

If payment for estimated income tax is to be made by check or money order, make it payable to North Dakota State Tax Commissioner.

Payment for estimated income tax may be made by electronic funds transfer. Information regarding electronic payments can be found on the department's Web site at www.ndtaxdepartment.com, under Corporate Income, Electronic Filing.

Amendments to estimated income tax

If it is found that the total estimated income tax is more or less than originally determined, amend the next installment.

Overpayment of estimated tax

An overpayment of estimated income tax from the prior taxable year may be credited to the current year's estimated payments. The amount of the 2004 overpayment will be applied to the first installment for 2005, unless the corporation elects another installment on Form 40, page 1, line 21a.

Application of estimated income tax payments

All payments submitted as 2004 estimated income tax and any overpayment credited from the 2003 taxable year must be reported on the 2004 North Dakota Corporation Income Tax Return Form 40.

Understatement of estimated income tax

Except for income computed using the federal annualization method or income qualifying as recurring seasonal income, interest charges will apply if the estimated income tax payment for any quarter (including overpayment credits from prior quarters) is less than 90% of the quarterly income tax liability or is less than the prior year's North Dakota income tax liability divided by four.

The Underpayment of Estimated North Dakota Income Tax by Corporations Form 40-UT must be attached to the North Dakota Corporation Income Tax Return, Form 40 when filing. The Form 40-UT is located within the Form 40 booklet.

Interest

The State Tax Commissioner will notify the taxpayer of any interest owed on any underpayment of estimated income tax. If desired, interest owed may be computed by the taxpayer on Form 40-UT and added to the 2004 corporation income tax liability on Form 40, Page 1. Interest is calculated at the rate of 12% per annum from the installment due date to the earlier of the date the estimated tax is paid or the due date (without extension) of the return.

Exceptions

If the estimated tax paid on or before each due date is computed using the annualization method provided in the Internal Revenue Code of 1986, as amended, no interest is due. Also, no interest is due if the underpayment of any installment comes within the exception provided in the Internal Revenue Code of 1986, as amended, Section 6655(e) for income qualifying as recurring seasonal income.

40-ES

Form
40-ESNorth Dakota Office of State Tax Commissioner
**Estimated tax payment voucher —
corporation**

40-ES

2005

4th InstallmentDue 15th day of first month following
close of 2005 taxable year.
☐ Calendar year: January 1 through December 31, 2005

☐ Fiscal year beginning _____, 2005, and ending _____

Name as shown on North Dakota corporation income tax return

FEIN -

Mailing address

Amount of Payment \$

For Tax Department use only

City, state and zip code

Phone Number

- Do not use this voucher if paying by means of an Automated Clearing House (ACH) credit.
- Make check or money order payable to "North Dakota State Tax Commissioner"
- Mail to: Office of State Tax Commissioner, 600 E. Boulevard Ave., Dept. 127, Bismarck, ND 58505-0599

40-ES

40-ES

40-ES

Form
40-ESNorth Dakota Office of State Tax Commissioner
**Estimated tax payment voucher —
corporation**

40-ES

2005

1st Installment
Due 15th day of fourth month
of 2005 taxable year.☐ Calendar year: January 1 through December 31, 2005☐ Fiscal year beginning _____, 2005, and ending _____, _____

Name as shown on North Dakota corporation income tax return

FEIN -

Mailing address _____

City, state and zip code _____

Phone Number _____

Amount of Payment \$

For Tax Department use only

40-ES

• Do not use this voucher if paying by means of an Automated Clearing House (ACH) credit.

- Make check or money order payable to "North Dakota State Tax Commissioner"
- Mail to: Office of State Tax Commissioner, 600 E. Boulevard Ave., Dept. 127, Bismarck, ND 58505-0599

40-ES

40-ES

Form
40-ESNorth Dakota Office of State Tax Commissioner
**Estimated tax payment voucher —
corporation**

40-ES

2005

2nd Installment
Due 15th day of sixth month
of 2005 taxable year.☐ Calendar year: January 1 through December 31, 2005☐ Fiscal year beginning _____, 2005, and ending _____, _____

Name as shown on North Dakota corporation income tax return

FEIN -

Mailing address _____

City, state and zip code _____

Phone Number _____

Amount of Payment \$

For Tax Department use only

40-ES

• Do not use this voucher if paying by means of an Automated Clearing House (ACH) credit.

- Make check or money order payable to "North Dakota State Tax Commissioner"
- Mail to: Office of State Tax Commissioner, 600 E. Boulevard Ave., Dept. 127, Bismarck, ND 58505-0599

40-ES

40-ES

Form
40-ESNorth Dakota Office of State Tax Commissioner
**Estimated tax payment voucher —
corporation**

40-ES

2005

3rd Installment
Due 15th day of ninth month
of 2005 taxable year.☐ Calendar year: January 1 through December 31, 2005☐ Fiscal year beginning _____, 2005, and ending _____, _____

Name as shown on North Dakota corporation income tax return

FEIN -

Mailing address _____

City, state and zip code _____

Phone Number _____

Amount of Payment \$

For Tax Department use only

40-ES

• Do not use this voucher if paying by means of an Automated Clearing House (ACH) credit.

- Make check or money order payable to "North Dakota State Tax Commissioner"
- Mail to: Office of State Tax Commissioner, 600 E. Boulevard Ave., Dept. 127, Bismarck, ND 58505-0599

40-ES